IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5059 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

NATWARLAL K RAVAL

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR GM JOSHI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/03/2000

ORAL JUDGEMENT

Rule.Service of rule is waived by Mr. Joshi,learned advocate appearing for the respondent workman. On the facts and in the circumstances of the case, the matter has been taken up for final hearing

today itself.

In this petition, the petitioner has challenged the award passed by the labour court, Junagadh in Reference No. 165 of 1998 dated 27.1.1999 whereby the labour court, Junagadh has granted reinstatementof the respondent workman with continuity of service and other consequential benefits but without back wages for the intervening period.

The facts of the present petition, in brief, are that therespondent was working with the petitioner corporation as a conductor. On 17.12.1995, the bus which was conducted by the respondent was checked and it was found that though the respondent had collelcted bus fare of Rs.108/-, he had not issued tickets for the same till the bus was checked. Thereafter, therespondent was served with a chargesheet and thereafter departmental inquiry was initiated and at the end of the said departmental inquiry, the respondent was found guilty of the charges levelled against him. Therefore, on 6.8.1996, the respondent was dismissed from service. Said action was chalenged by the respondent before the labour court by filing reference no. 165 of 1998 which came to be allowed as aforesaid. Feeling aggrieved by the said award passed by the labour court in aforesaid reference, the petitioner has approached this court by meansof this petition under Article 226 and/or 227 of the Constitution of India.

This Court,while issuing notice to the respondent, has granted ad-interim stay of the impugned award on 20.12.1999.

Learned advocate Ms. Bhatt appearing for the petitioner corporation has submitted that the labour court has considered the past record of the respondent workman. She has submitted that in past, 31 defaults which are similar in nature were committed by the respondent workman and in view of the past record of the respondent workman, the labour court ought to have refrained itself from granting reinstatement of the respondent workman. Shehas further submitted that even if the labour court found that the punishment of dismissal is harsh and/or excessive and unjustified, then, in such circumstances, the labour court ought to have imposed some punishment in view of the past record of the respondent workman. According to her, mere denial of back wages was not sufficient in the facts and circumstances of the present case.

On the other hand, learned advocate Mr. Joshi appearing for the respondent workman has submitted that thelabour court has considered all the aspects of thematter while passing the impugned award. Hehas further submitted that the labour court has appreciated the explanation of the respondent that on the dateof incident, bus was late for more than one hour and more than 100 passengers were travelling in the bus and there was no space available for moving in the bus to issue tickets to the respective passengers and, therefore, the respondent was doing the road booking and after appreciating such explanation of the respondent workman, the labour court has come to the conclusion that at the time of checking, relevant tickets were in the hands of the respondent and he was doing road booking and more than 70 passengers were there in the bus who were found withtickets and therefore, considering 30 years' length of service of the respondent, thelabour court found that the punishment of dismissal is harsh and unjustified and, therfore, the labour court was justified in granting reinstatement to the respondent. He has further submitted that while granting reinstatement in favour of the respondent workman, the labour court has also considered the past record of the respondent workman and therefore, now this court should not interfere with the impugned award passed by the labour court. He has, however,left the question of imposition of some reasonable punishment at the discretion of this court and has submitted that that court may pass some order of punishment but has prayed before this court that this court should not interfere with the reinstatement part of the impugned award.

I have perused the impugned award passed by the labour court. I have also considered the papers brought on record. I have also appreciated and considered the submissions made by the learned advocates for the respective parties.

In the facts and circumstances of the case and also keeping in view the past record of the respondent workman, I am of the view that it was the duty of the labour court to impose some punishment on the respondent workman while directing his reinstatement in service. I am of the view that in view of the explanation of the workman as has been considered and appreciated by the labour court, the labour court was justified incoming to the conclusion that the punishment of dismisal from service is harsh and unjustified but the labour court has erred in not imposing any punishment on the respondent while ordering and awarding his reinstatement. Therefore, to that extent, the impugned award passed by the labour

court is required to be modified. I therefore, pass the following order.

The petitioner corporation is directed to reinstate the responldent workman in service with continuity of service and with all consequential benefits but without back wages for the intervening period. The petitioner corporation is further directed to stop three annual increments of the respondent workman with permanent effect. The petition is, thus, partly allowed to the extent indicated hereinabove. Rule is made absolute in terms indicated hereinabove.

In view of this modification of the impugned award, in the larger interestof justice, the petitioner corporation is directed to reinstate the respondent workman in service within four weeks from the dateof receipt of certified copy of this order and is further directed to pay full wages from the date of the award passed by the labour court i.e. 27.1.1999 till the date of actual reinstatement of the respondent workman within eight weeks from the date of receipt of certified copy of this order.

22.3.2000. (H.K.Rathod,J.)

Vyas